

Feb 12, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DENISE C.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

NO: 4:18-CV-5021-FVS

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment. ECF Nos. 14 and 15. This matter was submitted for consideration without oral argument. The plaintiff is represented by Attorney Chad L. Hatfield. The defendant is represented by Special Assistant United States Attorney Justin L. Martin. The Court has reviewed the administrative record, the parties' completed briefing, and is fully informed. For the reasons discussed below, the Court **GRANTS** Defendant's Motion for Summary Judgment, ECF No. 15, and **DENIES** Plaintiff's Motion for Summary Judgment, ECF No. 14.

JURISDICTION

Plaintiff Denise C.¹ filed for supplemental security income and disability insurance benefits on May 30, 2014. Tr. 200-12. Plaintiff alleged an onset date of June 1, 2000, which was later amended to June 1, 2014 at the hearing. Tr. 45, 200, 204. Benefits were denied initially, Tr. 132-42, and upon reconsideration, Tr. 145-54. Plaintiff appeared for a hearing before an administrative law judge (“ALJ”) on August 2, 2016. Tr. 41-79. Plaintiff was represented by counsel and testified at the hearing. *Id.* The ALJ denied benefits, Tr. 15-38, and the Appeals Council denied review. Tr. 1. The matter is now before this court pursuant to 42 U.S.C. §§ 405(g); 1383(c)(3).

BACKGROUND

The facts of the case are set forth in the administrative hearing and transcripts, the ALJ’s decision, and the briefs of Plaintiff and the Commissioner. Only the most pertinent facts are summarized here.

Plaintiff was 48 years old at the time of the hearing. Tr. 47. She completed ninth grade and did not get her GED. Tr. 48. At the time of the hearing, she lived

¹ In the interest of protecting Plaintiff’s privacy, the Court will use Plaintiff’s first name and last initial, and, subsequently, Plaintiff’s first name only, throughout this decision. In addition, the Court notes that Plaintiff’s last name changed during the pendency of this litigation.

1 by herself. Tr. 47. Plaintiff has work history as a cook and counter attendant. Tr.
2 51-54, 75. She testified that she was unable to work because she hears voices and
3 hallucinates “all the time” and if she’s around people “something will go wrong
4 and [she will] get mad and yell, scream, out of control, and [she] can’t help it.” Tr.
5 54. Plaintiff also testified to a history of substance abuse, including multiple
6 relapses on methamphetamine during the relevant adjudicatory period. Tr. 49-50.
7 She also reported that she uses marijuana two or three times a week to help with
8 sleep and staying calm. Tr. 67

9 Plaintiff testified that she alternates between periods of mania and
10 depression, sometimes on a weekly basis. Tr. 55, 58. She reported auditory
11 hallucinations and trouble sleeping, particularly during manic periods. Tr. 56, 59.
12 Plaintiff also testified that she stopped driving because of anxiety and panic, is
13 unable to cross intersections by herself, and has trouble with memory and
14 concentration. Tr. 54-55, 61, 71.

15 STANDARD OF REVIEW

16 A district court’s review of a final decision of the Commissioner of Social
17 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
18 limited; the Commissioner’s decision will be disturbed “only if it is not supported
19 by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,
20 1158 (9th Cir. 2012). “Substantial evidence” means “relevant evidence that a
21 reasonable mind might accept as adequate to support a conclusion.” *Id.* at 1159

1 (quotation and citation omitted). Stated differently, substantial evidence equates to
2 “more than a mere scintilla[,] but less than a preponderance.” *Id.* (quotation and
3 citation omitted). In determining whether the standard has been satisfied, a
4 reviewing court must consider the entire record as a whole rather than searching
5 for supporting evidence in isolation. *Id.*

6 In reviewing a denial of benefits, a district court may not substitute its
7 judgment for that of the Commissioner. If the evidence in the record “is
8 susceptible to more than one rational interpretation, [the court] must uphold the
9 ALJ’s findings if they are supported by inferences reasonably drawn from the
10 record.” *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district
11 court “may not reverse an ALJ’s decision on account of an error that is harmless.”
12 *Id.* An error is harmless “where it is inconsequential to the [ALJ’s] ultimate
13 nondisability determination.” *Id.* at 1115 (quotation and citation omitted). The
14 party appealing the ALJ’s decision generally bears the burden of establishing that
15 it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

16 **FIVE-STEP EVALUATION PROCESS**

17 A claimant must satisfy two conditions to be considered “disabled” within
18 the meaning of the Social Security Act. First, the claimant must be “unable to
19 engage in any substantial gainful activity by reason of any medically determinable
20 physical or mental impairment which can be expected to result in death or which
21 has lasted or can be expected to last for a continuous period of not less than twelve

1 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s
2 impairment must be “of such severity that he is not only unable to do his previous
3 work[,] but cannot, considering his age, education, and work experience, engage in
4 any other kind of substantial gainful work which exists in the national economy.”
5 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

6 The Commissioner has established a five-step sequential analysis to
7 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
8 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
9 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
10 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
11 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
12 404.1520(b), 416.920(b).

13 If the claimant is not engaged in substantial gainful activity, the analysis
14 proceeds to step two. At this step, the Commissioner considers the severity of the
15 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
16 claimant suffers from “any impairment or combination of impairments which
17 significantly limits [his or her] physical or mental ability to do basic work
18 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
19 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
20 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.
21 §§ 404.1520(c), 416.920(c).

1 At step three, the Commissioner compares the claimant's impairment to
2 severe impairments recognized by the Commissioner to be so severe as to preclude
3 a person from engaging in substantial gainful activity. 20 C.F.R. §§
4 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
5 severe than one of the enumerated impairments, the Commissioner must find the
6 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

7 If the severity of the claimant's impairment does not meet or exceed the
8 severity of the enumerated impairments, the Commissioner must pause to assess
9 the claimant's "residual functional capacity." Residual functional capacity (RFC),
10 defined generally as the claimant's ability to perform physical and mental work
11 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
12 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the
13 analysis.

14 At step four, the Commissioner considers whether, in view of the claimant's
15 RFC, the claimant is capable of performing work that he or she has performed in
16 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
17 If the claimant is capable of performing past relevant work, the Commissioner
18 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).
19 If the claimant is incapable of performing such work, the analysis proceeds to step
20 five.

1 At step five, the Commissioner considers whether, in view of the claimant's
2 RFC, the claimant is capable of performing other work in the national economy.
3 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
4 the Commissioner also must consider vocational factors such as the claimant's age,
5 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
6 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
7 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
8 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
9 work, analysis concludes with a finding that the claimant is disabled and is
10 therefore entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

11 The claimant bears the burden of proof at steps one through four. *Tackett v.*
12 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five,
13 the burden shifts to the Commissioner to establish that (1) the claimant is capable
14 of performing other work; and (2) such work "exists in significant numbers in the
15 national economy." 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v. Astrue*,
16 700 F.3d 386, 389 (9th Cir. 2012).

17 A finding of "disabled" does not automatically qualify a claimant for
18 disability benefits. *Bustamante v. Massanari*, 262 F.3d 949, 954 (9th Cir. 2001).
19 When there is medical evidence of drug or alcohol addiction ("DAA"), the ALJ
20 must determine whether the DAA is a material factor contributing to the disability.
21 20 C.F.R. § 416.935(a). It is the claimant's burden to prove substance addiction is

1 not a contributing factor material to her disability. *Parra v. Astrue*, 481 F.3d 742,
2 748 (9th Cir. 2007).

3 **ALJ'S FINDINGS**

4 At step one, the ALJ found Plaintiff has not engaged in substantial gainful
5 activity since June 1, 2014, the amended alleged onset date. Tr. 21. At step two,
6 the ALJ found Plaintiff has the following severe impairments: bipolar disorder and
7 substance abuse. Tr. 21. At step three, the ALJ found that Plaintiff's impairments,
8 including the substance use disorders, meet Listings 12.04, 12.06, and 12.09 of 20
9 C.F.R. Part 404, Subpt. P, App'x 1. Tr. 21. However, the ALJ found that if
10 Plaintiff stopped the substance use, she would continue to have a severe
11 impairment or combination of impairments at step two, but the impairments would
12 not meet or medically equal the severity of a listed impairment at step three. Tr.
13 23. The ALJ then determined that if the Plaintiff stopped the substance use, she

14 would not have any exertional limitations but would have the following
15 nonexertional limitations: the claimant has basic skills in reading and
16 mathematics. The claimant is able to understand and remember simple
17 instructions, and perform simple routine tasks. She can perform work
18 with no contact with the public, but may have occasional superficial
19 contact with coworkers.

20 Tr. 24-25. At step four, the ALJ found that if Plaintiff stopped the substance
21 abuse, she would be unable to perform past relevant work. Tr. 31. At step five,
the ALJ found that if Plaintiff stopped substance abuse, considering Plaintiff's age,
education, work experience, and RFC, there would be a significant number of jobs
in the national economy that Plaintiff could perform, such as kitchen helper,

1 laundry worker II, and cleaner housekeeping. Tr. 31-32. Finally, the ALJ found
2 that substance use disorder is a contributing factor material to the determination of
3 disability because Plaintiff would not be disabled if she stopped the substance use.
4 Tr. 32. Thus, the ALJ concluded that Plaintiff has not been disabled within the
5 meaning of the Social Security Act at any time from the amended alleged onset
6 date through the date of the decision. Tr. 32.

7 **ISSUES**

8 Plaintiff seeks judicial review of the Commissioner's final decision denying
9 her disability insurance benefits under Title II of the Social Security Act and
10 supplemental security income benefits under Title XVI of the Social Security Act.

11 ECF No. 14. Plaintiff raises the following issues for this Court's review:

- 12 1. Whether the ALJ erred in finding substance abuse was material to the
13 disability determination;
- 14 2. Whether the ALJ erred at step two;
- 15 3. Whether the ALJ erred at step three;
- 16 4. Whether the ALJ properly weighed the medical opinion evidence;
- 17 5. Whether the ALJ properly considered Plaintiff's symptom claims; and
- 18 6. Whether the ALJ erred at step five.

19 **DISCUSSION**

20 **A. DAA Analysis**

21 A social security claimant is not entitled to benefits "if alcoholism or drug
addiction would . . . be a contributing factor material to the Commissioner's

1 determination that the individual is disabled.” 42 U.S.C. § 423(d)(2)(C),
2 1382c(a)(3)(J). Therefore, when there is medical evidence of drug or alcohol
3 addiction, the ALJ must conduct a DAA analysis and determine whether drug or
4 alcohol addiction is a material factor contributing to the disability. 20 C.F.R. §§
5 404.1535(a), 416.935(a). In order to determine whether drug or alcohol addiction
6 is a material factor contributing to the disability, the ALJ must evaluate which of
7 the current physical and mental limitations would remain if the claimant stopped
8 using drugs or alcohol, then determine whether any or all of the remaining
9 limitations would be disabling. 20 C.F.R. §§ 404.1535(b)(2), 416.935(b)(2). If the
10 remaining limitations without DAA would still be disabling, then the claimant's
11 drug addiction or alcoholism is not a contributing factor material to his disability.
12 If the remaining limitations would not be disabling without DAA, then the
13 claimant's substance abuse is material and benefits must be denied. *Parra v.*
14 *Astrue*, 481 F.3d 742, 747-48 (9th Cir. 2007). “The claimant bears the burden of
15 proving that drug or alcohol addiction is not a contributing factor material to his
16 disability.” *Id.* at 748.

17 Here, the ALJ found substance use disorder is a contributing factor material
18 to the determination of disability because Plaintiff would not be disabled if she
19 stopped substance use. Tr. 32. As an initial matter, Plaintiff generally argues the
20 ALJ erred by “(1) failing to distinguish between methamphetamine use
21 contributing to [Plaintiff’s] disability and the disability remaining after she stopped

1 using methamphetamine;” and (2) failing to completely conduct the five-step
2 sequential disability inquiry without separating out the impact of [Plaintiff’s] past
3 methamphetamine use.” ECF No. 14 at 9-10 (internal citations omitted).

4 However, as noted by Defendant, “the ALJ found at step three that Plaintiff’s
5 mental impairments, including the substance use disorder, met Listings 12.04,
6 12.06, and 12.09 because Plaintiff had marked limitations in at least two of the four
7 areas of functioning commonly referred to as ‘the paragraph B criteria.’ She then
8 performed the sequential evaluation process a second time, separating out the
9 impact of Plaintiff’s DAA, to determine if she would still be found disabled if she
10 stopped using drugs.” ECF No. 15 at 18 (citing Tr. 22-26). As part of this
11 evaluation, the ALJ properly relied on evidence gathered from Plaintiff’s
12 undisputed period of sobriety beginning in January 2015, and extending through
13 the date of the hearing, which indicated that “[o]nce treated and sober, [Plaintiff’s]
14 symptoms greatly reduced and her mood was later noted as stable and well
15 controlled.” Tr. 25-26 (citing Tr. 422, 427, 434, 543, 553, 576, 579, 588-89, 656-
16 58, 702, 709, 732, 738-40); *see* SSR 13-2p at *12 (February 20, 2013), *available at*
17 2013 WL 621536 (directing ALJs to consider periods of abstinence from substance
18 use including “what, if any, medical findings and impairment-related limitations
19 remained after the acute effects of drug and alcohol use abated. . . . To find that
20 DAA is material, we must have evidence in the case record demonstrating that any
21 remaining limitations were not disabling during the period). Thus, the Court is

1 unable to discern any failure by the ALJ to follow the procedures for considering
2 whether DAA is material to a finding of disability; rather, as noted by the ALJ in
3 the decision, she “carefully considered the requirements of SSR 13-2p, which
4 describes the [SSA’s] policy for evaluating cases involving drug addiction and
5 alcoholism.” Tr. 25.

6 Second, Plaintiff argues the ALJ’s DAA finding “improperly overlook[ed]
7 substantial evidence of record.” ECF No. 14 at 10 (citing Tr. 25-26). In support of
8 this argument, Plaintiff relies on a single treatment record from April 15, 2016 that
9 “shows [Plaintiff] presented with worsening symptoms and declining functioning”;
10 and Global Assessment of Functioning (GAF) scores from 2015 and 2016
11 indicating “serious impairments in functioning” from 2015 and 2016. ECF No. 14
12 at 10 (citing Tr. 30-31, 678). This argument is unavailing. First, the ALJ
13 explicitly acknowledged Plaintiff’s reports of depression, anxiety, paranoid
14 thoughts, and hallucinations in 2016 as evidence that Plaintiff still suffers from a
15 “significant condition without the influence of substance abuse.” Tr. 28 (citing Tr.
16 656-58). However, the ALJ further determined that “some of this appears to have
17 been brought on by life stressors, in particular, her mother’s illness”; and during
18 the same visit Plaintiff’s activities of daily living were noted as good, mood stable,
19 speech within normal limits, normal thought process and content, no paranoid
20 thinking, not responding to internal stimuli, and “doing very well and utilizing
21 services optimally.” Tr. 28 (citing Tr. 656-68, 747); *Burch v. Barnhart*, 400 F.3d

676, 683 (9th Cir. 2005) (“[W]here evidence is susceptible to more than one rational interpretation, it is the [Commissioner’s] conclusion that must be upheld.”). Moreover, the ALJ specifically considered the GAF scores, including those assessed during the relevant period of sobriety, and gave them little weight, because they were contradicted by the record as a whole, and only show Plaintiff’s mentality at a specific time. Tr. 30-31; see *Garrison v. Colvin*, 759 F.3d 995, 1002 n.4 (9th Cir. 2014) (“GAF scores, standing alone, do not control determinations of whether a person’s mental impairments rise to the level of a disability”). Finally, the Court notes that the ALJ cited multiple notes from treating providers stating that Plaintiff’s hallucinations and aggressive behaviors, prior to her periods of remission, were likely related to her substance abuse. Tr. 23-24, 443, 512, 833, 848, 891, 910).

Based on the foregoing, the ALJ’s conclusion that Plaintiff’s co-occurring mental disorders had improved to the point of nondisability in the absence of substance use, as directed by SSR 13-2p, was supported by substantial evidence. Tr. 23-24, 25-26. Thus, the ALJ did not err in finding Plaintiff’s “substance use disorder is a contributing factor material to the determination of disability because [Plaintiff] would not be disabled if she stopped the substance use.” Tr. 32.

B. Step Two

To be considered “severe” at step two of the sequential analysis, an impairment must significantly limit an individual’s ability to perform basic work

1 activities. 20 C.F.R. §§ 404.1520(c), 416.920(c); *also Smolen v. Chater*, 80 F.3d
2 1273, 1290 (9th Cir.1996). An impairment that is “not severe” must be a slight
3 abnormality (or a combination of slight abnormalities) that has no more than a
4 minimal effect on the ability to do basic work activities. SSR 96-3p, 1996 WL
5 374181 at *1 (July 2, 1996). Plaintiff bears the burden to establish the existence of
6 a severe impairment or combination of impairments, which prevent him from
7 performing substantial gainful activity, and that the impairment or combination of
8 impairments lasted for at least twelve continuous months. 20 C.F.R. §§ 404.1505,
9 404.1512(a); *Edlund v. Massanari*, 253 F.3d 1152, 1159-60 (9th Cir. 2011).
10 However, step two is “a de minimus screening device [used] to dispose of
11 groundless claims.” *Smolen*, 80 F.3d at 1290. “Thus, applying our normal
12 standard of review to the requirements of step two, we must determine whether the
13 ALJ had substantial evidence to find that the medical evidence clearly established
14 that [Plaintiff] did not have a medically severe impairment or combination of
15 impairments.” *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005).

16 Here, the ALJ resolved step two in Plaintiff’s favor, finding Plaintiff has the
17 following severe impairments: bipolar disorder and substance abuse. Tr. 21.
18 Despite this finding, Plaintiff argues that the ALJ failed to account for additional
19 severe impairments that have “significantly limited her ability to perform basic
20 activities,” including: PTSD, chronic pulmonary impairments, migraine
21 headaches, hepatitis C, GERD with chronic abdominal pain, urinary incontinence,

1 muscle spasms and pain in Plaintiff's neck, chronic left shoulder pain,
2 hyponatremia, and tailbone pain. ECF No. 14 at 14-15 (citing Tr. 408, 414, 452-
3 55, 458, 460, 466, 477, 485, 536-47, 557-60, 564-66, 571, 575-78, 588-90, 624,
4 829-30). The argument is inapposite for several reasons.

5 First, Plaintiff fails to address the ALJ's specific finding that Plaintiff's
6 headaches are non-severe impairments because they are well-controlled with
7 treatment and medication, and therefore have "such a minimal effect on [Plaintiff]
8 as to not be expected to interfere with her ability to work." Tr. 21; *see Carmickle*
9 *v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir. 2008) (court may
10 decline to address issue not raised with specificity in Plaintiff's briefing).

11 Moreover, even assuming, *arguendo*, that the ALJ erred in finding the impairments
12 identified by Plaintiff were non-severe, any error is harmless because Plaintiff fails
13 to identify how these alleged impairments result in limitations beyond those
14 included in the assessed RFC. *See Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir.
15 2007) (holding that ALJ's failure to list plaintiff's bursitis as a severe impairment
16 at step two was harmless where ALJ considered limitations caused by the
17 condition at step four); *see also Molina*, 674 F.3d at 1115 (error is harmless "where
18 it is inconsequential to the [ALJ's] ultimate nondisability determination). As
19 discussed below, the ALJ properly weighed the opinion evidence and Plaintiff's
20 symptom claims; and as a result, the RFC incorporated the limitations supported by
21 substantial evidence in the record. The Court finds no error at step two.

C. Step Three

Plaintiff faults the ALJ for finding at step three that Plaintiff's mental impairment did not meet or medically equal the severity of a listed impairment. ECF No. 14 at 15-16. At step three, the ALJ must determine if a claimant's impairments meet or equal a listed impairment. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). The Listing of Impairments "describes for each of the major body systems impairments [which are considered] severe enough to prevent an individual from doing any gainful activity, regardless of his or her age, education or work experience." 20 C.F.R. §§ 404.1525, 416.925. To meet a listed impairment, a claimant must establish that he meets each characteristic of a listed impairment relevant to her claim. 20 C.F.R. §§ 404.1525(d), 416.925(d). If a claimant meets the listed criteria for disability, he will be found to be disabled. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii). The claimant bears the burden of establishing he meets a listing. *Burch*, 400 F.3d at 683.

In determining whether a claimant's mental impairments meet a listing, the ALJ considers (1) whether specified diagnostic criteria ("paragraph A" criteria) are met, and (2) whether specified functional limitations ("paragraph B" criteria) are present. 20 C.F.R. § 404.1520a. To meet listing 12.04, affective disorders, or listing 12.06, anxiety related disorders, a claimant who satisfies the paragraph A criteria must meet at least two of the following paragraph B criteria: (1) marked restriction of activities of daily living; (2) marked difficulties in maintaining social

1 functioning; (3) marked difficulties in maintaining concentration, persistence, or
2 pace; and (4) repeated episodes of decompensation, each of extended duration. 20
3 C.F.R. § 404, Subpart P, Appendix I. “Marked” means more than moderate but
4 less than extreme. *Id.*

5 Here, the ALJ found that Plaintiff impairments, including the substance use
6 disorders, meet the criteria of Listing 12.04, 12.06, and 12.09 (by reference to
7 Listing sections 12.04 and 12.06). Tr. 21-23. However, the ALJ ultimately
8 concluded that if Plaintiff stopped the substance use, the severity of her mental
9 impairments would not meet or medically equal the criteria of Listing 12.04 or
10 12.06. Tr. 23. Specifically, the ALJ found the “paragraph B” criteria were not
11 satisfied because Plaintiff had only mild to moderate limitations in “paragraph B”
12 areas of mental functioning. Tr. 23-24. Plaintiff generally contends, without
13 citation to legal authority or specific reference to the longitudinal record, that even
14 in the absence of substance use “she remains disabled at step three pursuant to
15 Listings 12.04 and 12.06” due to “(1) avoidance of social interactions due to
16 depression, panic, anxiety, and paranoia; (2) frequent inappropriate outbursts of
17 yelling, screaming, and cursing; (3) high distractibility due to auditory
18 hallucinations; (4) inability to complete tasks due to concentration deficits and low
19 frustration tolerance; and (5) inability to pass GED despite multiple attempts and
20 accommodation of extra time.” ECF No. 14 at 15-16.

1 However, as argued by Defendant, “[t]his argument misses the mark because
2 Plaintiff fails to explain how such evidence demonstrates that her impairments
3 satisfy the paragraph B criteria for the relevant Listings.” ECF No. 15 at 8; *see*
4 *Tackett*, 180 F.3d at 1100 (a generalized assertion of functional problems is not
5 enough to establish that a claimant met or equaled a Listing). Moreover, Plaintiff
6 fails to cite medical evidence from the relevant period of sobriety, including
7 opinion evidence, to support the argument that the ALJ erred at step three. As
8 noted by the ALJ, no psychological consultant designated by the Commissioner on
9 the issue of equivalence has concluded that a mental listing is medically equaled.
10 Tr. 24, 87, 98, 111-12, 123-24. Thus, as Plaintiff fails to cite specific records to
11 support her argument that her impairments continue to meet the Listings even after
12 stopping substance use, the Court is left to presume that Plaintiff is relying entirely
13 on her own testimony and self-reported limitations. *See* ECF No. 14 at 3-6 (citing
14 Tr. 48-73, 419). As discussed in detail below, the ALJ properly discounted
15 Plaintiff’s symptom claims. Accordingly, Plaintiff’s reliance on this evidence does
16 not establish that the ALJ erred in failing to credit that evidence when assessing
17 whether Plaintiff’s impairments would continue to meet or medically equal
18 Listings 12.04 and 12.06 if she stopped substance use.

19 Based on the foregoing, the Court finds the ALJ properly concluded, based
20 on substantial evidence, that Plaintiff’s claimed mental impairments did not meet
21 or medically equal Listing 12.04 or 12.06 in the absence of substance use.

D. Medical Opinions

There are three types of physicians: “(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat the claimant (examining physicians); and (3) those who neither examine nor treat the claimant [but who review the claimant's file] (nonexamining [or reviewing] physicians).” *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th Cir.2001) (citations omitted).

Generally, a treating physician's opinion carries more weight than an examining physician's, and an examining physician's opinion carries more weight than a reviewing physician's. *Id.* If a treating or examining physician's opinion is uncontradicted, the ALJ may reject it only by offering “clear and convincing reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.2005). Conversely, “[i]f a treating or examining doctor's opinion is contradicted by another doctor's opinion, an ALJ may only reject it by providing specific and legitimate reasons that are supported by substantial evidence.” *Id.* (citing *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995)).

“However, the ALJ need not accept the opinion of any physician, including a treating physician, if that opinion is brief, conclusory and inadequately supported by clinical findings.” *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (quotation and citation omitted).

1 Plaintiff argues the ALJ improperly assessed the opinions of treating
2 physician Sean Duffy, M.D., examining psychologist NK Marks, Ph.D., and
3 reviewing psychologist Phyllis N. Sanchez, Ph.D. ECF No. 14 at 11-14.

4 *1. Sean Duffy, M.D.*

5 In June 2015, treating physician Dr. Duffy opined that work on a regular and
6 continuous basis would cause Plaintiff's condition to deteriorate; and she would
7 miss 4 or more days of work in a 40-hour per week schedule due to "paranoia
8 related to bipolar disorder." Tr. 414-15. The ALJ gave Dr. Duffy's opinion little
9 weight because it "is inconsistent with the entire longitudinal record, as it was
10 drafted in June 2015, and does not consider [Plaintiff's] treatment records for 2016
11 showing a well-controlled mood and largely normal mental status examinations."
12 Tr. 30. Similarly, the ALJ noted that Plaintiff's mental health "improved
13 immensely" after she stopped the substance use. Tr. 30.

14 An ALJ may discount an opinion that is conclusory, brief, and unsupported
15 by the record as a whole, or by objective medical findings. *Batson v. Comm'r Soc.*
16 *Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *see also Orn v. Astrue*, 495 F.3d
17 625, 631 (9th Cir. 2007) (the consistency of a medical opinion with the record as a
18 whole is a relevant factor in evaluating that medical opinion). Plaintiff argues the
19 ALJ's reasoning was improper because it "selectively focused" on portions of the
20 medical record that would tend to support a finding of non-disability. ECF No. 14
21 at 12. In support of this finding, Plaintiff relies solely on (1) her reports in April

1 2016 that she was experiencing depression and hypomania with excessive
2 spending (Tr. 419); and (2) a general statement, attributed to Dr. Duffy but without
3 citation to the record, that Plaintiff “struggles to cope with stressors in her life,
4 which would lead to poor functioning in the workplace and deterioration due to
5 encountering pressures therein.” ECF No. 14 at 12. However, the ALJ explicitly
6 cited consistent evidence of well-controlled mood and largely normal mental status
7 examinations in 2016, after Plaintiff stopped the substance use. Tr. 30 (citing Tr.
8 422, 427, 434, 452, 463, 479, 487, 553, 576, 579, 588-89, 656-58).

9 Thus, regardless of evidence that could be considered more favorable to
10 Plaintiff, the ALJ reasonably concluded that the severity of Dr. Duffy’s opinion
11 was inconsistent with the longitudinal record, including Plaintiff’s performance on
12 mental status examinations. Tr. 30; *Burch*, 400 F.3d at 679 (“[W]here evidence is
13 susceptible to more than one rational interpretation, it is the [Commissioner’s]
14 conclusion that must be upheld.”). This was a specific and legitimate reason to
15 give Dr. Duffy’s opinion little weight.

16 2. *NK Marks, Ph.D.*

17 In July 2014, DSHS examining psychologist, Dr. Marks, completed a
18 psychological evaluation of Plaintiff. Dr. Marks opined that Plaintiff would have
19 moderate limitations in four categories of “basic work activities;” and marked
20 limitations in her ability to (1) perform activities within a schedule, maintain
21 regular attendance, and be punctual within customary tolerances without special

1 supervision; (2) communicate and perform effectively in a work setting; and (3)
2 complete a normal work day and work week without interruptions from
3 psychologically based symptoms; (4) maintain appropriate behavior in a work
4 setting; and (5) set realistic goals and plan independently. Tr. 389-90. The ALJ
5 gave Dr. Marks' opinion little weight for several reasons. Tr. 29.

6 First, the ALJ noted that "[w]hile Dr. Marks examined [Plaintiff], the opined
7 limitations appear to be largely based off her objection statements and reports (e.g.,
8 'self-report'). Further, he did not have access to any medical records." Tr. 29. An
9 ALJ may reject a physician's opinion if it is based "to a large extent" on Plaintiff's
10 self-reports that have been properly discounted as incredible. *Tommasetti v.*
11 *Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). Plaintiff generally argues that "the
12 ALJ improperly determined the opinion was based solely on subjective complaints,
13 rather than Dr. Marks's professional expertise." ECF No. 14 at 13. However, as
14 specifically noted by the ALJ, Dr. Marks indicated he did not review medical
15 records; instead, his evaluation was based solely on the clinical interview and
16 mental status examination. Tr. 29, 387; 20 C.F.R. §§ 404.1527(c)(6),
17 416.927(c)(6) (familiarity with information in the case record is relevant to
18 assessing the weight accorded to a medical source's opinion). Moreover, the ALJ
19 specifically noted that Dr. Marks relied heavily on Plaintiff's "self report." Tr. 29.
20 The Court's review of Dr. Marks' opinion indicates that the "clinical findings"
21 were based on Plaintiff's "endorsement" of her diagnosis history and her report of

1 learning disabilities; the “assessment/diagnosis” section was largely based on
2 Plaintiff’s “self report”; and even the abnormal mental status examination results in
3 the areas of “thought process and content” and “perception” are based on
4 Plaintiff’s self-report of hallucinations. Tr. 388-91. For all of these reasons, and
5 regardless of evidence that could be considered favorable to Plaintiff, it was
6 reasonable for the ALJ to conclude that Dr. Marks’ opinion was based in large part
7 on Plaintiff’s properly discounted subjective complaints.² *See Burch*, 400 F.3d at
8 679 (where evidence is susceptible to more than one interpretation, the ALJ’s
9 conclusion must be upheld). This was a specific and legitimate reason to reject Dr.
10 Marks’ opinion.

11 Second, the ALJ found Dr. Marks’ opinion was inconsistent with the
12 longitudinal record, including largely benign mental status examinations during
13 periods of sobriety. Tr. 29. The consistency of a medical opinion with the record
14 as a whole is a relevant factor in evaluating that medical opinion. *Orn*, 495 F.3d at
15 631; *see also Batson*, 359 F.3d at 1195 (an ALJ may discount an opinion that is
16 conclusory, brief, and unsupported by the record as a whole, or by objective
17

18 ² Plaintiff also argues that the ALJ improperly discounted Plaintiff’s symptom
19 claims. ECF No. 14 at 13. However, as discussed herein, the ALJ’s rejection of
20 Plaintiff’s symptom claims was free of legal error and supported by substantial
21 evidence.

1 medical findings). Plaintiff generally argues, without citation to the record, that
2 “the longitudinal record indicates ongoing debilitating mental health symptoms
3 since establishing sobriety in January 2015.” ECF No. 14 at 13. However, in
4 support of this finding, the ALJ cited the largely benign mental status examinations
5 during Plaintiff’s periods of sobriety. Tr. 30 (citing Tr. 339, 342, 422, 427, 434,
6 452, 463, 479, 487, 506, 522, 553, 576, 579, 588-89, 630, 656-68, 702, 709, 732,
7 738, 747, 750, 892, 910, 916). Thus, regardless of evidence that could be
8 considered more favorable to Plaintiff, the ALJ reasonably concluded that the
9 limitations opined by Dr. Marks were inconsistent with the longitudinal record,
10 including the largely benign mental status examinations. Tr. 29; *Burch*, 400 F.3d
11 at 679. This was a specific and legitimate reason to give Dr. Marks’ opinion little
12 weight.

13 Third, and finally, as noted by Defendant, the ALJ found that Dr. Marks’
14 opinion was inconsistent with Plaintiff’s “good activities of daily living, especially
15 noted during periods of sobriety.” Tr. 29. An ALJ may discount an opinion that is
16 inconsistent with a claimant’s reported functioning. *See Morgan v. Comm’r Soc.*
17 *Sec. Admin.*, 169 F.3d 595, 601-02 (9th Cir. 1999). The Court declines to address
18 this issue because Plaintiff did not challenge the reason with specificity in his
19 opening brief. *See Carmickle*, 533 F.3d at 1161 n.2.

20 For all of these reasons, the Court finds no error in the ALJ’s rejection of Dr.
21 Marks’ opinion.

1 3. *Phyllis N. Sanchez, Ph.D.*

2 In July 2014, DSHS psychologist Dr. Phyllis N. Sanchez reviewed Dr.
3 Marks' evaluation, and generally opined that the diagnoses and functional
4 limitations opined by Dr. Marks were supported by available medical evidence.
5 Tr. 416. The ALJ noted that Dr. Sanchez "did not have access to medical records
6 and only reviewed Dr. Marks' report"; and that Dr. Sanchez incorrectly stated that
7 Plaintiff "has been sober for over a decade ("per report"), which as shown [in the
8 decision] is incorrect as [Plaintiff] has used methamphetamine multiple
9 documented times during the relevant period." Tr. 29-30. The ALJ gave Dr.
10 Sanchez's opinion little weight because it was "inconsistent with the longitudinal
11 record, including benign mental status examinations, and appears to be largely
12 based off conjecture." Tr. 30.

13 Plaintiff briefly argues the ALJ "improperly rejected Dr. Sanchez's opinion
14 for the same reason she rejected [Dr. Marks'] opinion." ECF No. 14 at 14. First,
15 the Court notes this is not an entirely accurate representation of the ALJ's findings.
16 As discussed above, the ALJ offered additional reasons, supported by substantial
17 evidence, for discounting Dr. Marks' opinion. Moreover, Plaintiff fails to argue
18 with requisite specificity how the ALJ erred in considering Dr. Sanchez's opinion.
19 *See Carmickle*, 533 F.3d at 1161 n.2. Regardless, because Dr. Sanchez's opinion
20 was entirely premised on Dr. Marks' findings, and the ALJ properly rejected Dr.
21 Marks' opinion in part because it was inconsistent with the longitudinal record, the

1 Court finds it was reasonable for the ALJ to rely on the same inconsistency
2 between Dr. Sanchez’s opinion and the longitudinal record, including benign
3 mental status examinations, as a reason to reject her opinion. Tr. 29-30. The Court
4 finds no error in the ALJ’s rejection of Dr. Sanchez’s opinion.

5 **E. Plaintiff’s Symptom Claims**

6 An ALJ engages in a two-step analysis when evaluating a claimant’s
7 testimony regarding subjective pain or symptoms. “First, the ALJ must determine
8 whether there is objective medical evidence of an underlying impairment which
9 could reasonably be expected to produce the pain or other symptoms alleged.”
10 *Molina*, 674 F.3d at 1112 (internal quotation marks omitted). “The claimant is not
11 required to show that her impairment could reasonably be expected to cause the
12 severity of the symptom he has alleged; he need only show that it could reasonably
13 have caused some degree of the symptom.” *Vasquez v. Astrue*, 572 F.3d 586, 591
14 (9th Cir. 2009) (internal quotation marks omitted).

15 Second, “[i]f the claimant meets the first test and there is no evidence of
16 malingering, the ALJ can only reject the claimant’s testimony about the severity of
17 the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the
18 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (internal
19 citations and quotations omitted). “General findings are insufficient; rather, the
20 ALJ must identify what testimony is not credible and what evidence undermines
21 the claimant’s complaints.” *Id.* (quoting *Lester*, 81 F.3d at 834); *Thomas v.*

1 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (“[T]he ALJ must make a credibility
2 determination with findings sufficiently specific to permit the court to conclude
3 that the ALJ did not arbitrarily discredit claimant’s testimony.”). “The clear and
4 convincing [evidence] standard is the most demanding required in Social Security
5 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
6 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

7 Here, the ALJ found Plaintiff’s medically determinable impairments could
8 reasonably be expected to cause some of the alleged symptoms; however,
9 Plaintiff’s “statements concerning the intensity, persistence and limiting effects of
10 these symptoms are not entirely consistent with the objective medical and other
11 evidence” for several reasons. Tr. 26.

12 *1. Lack of Objective Medical Evidence*

13 First, the ALJ found the “medical evidence does not substantiate [Plaintiff’s]
14 allegations of incapacitating mental health symptoms”; and “[t]urning to a
15 chronological view of the record, the evidence fails to support limitations above
16 those stated in the [RFC].” Tr. 26-28. An ALJ may not discredit a claimant’s pain
17 testimony and deny benefits solely because the degree of pain alleged is not
18 supported by objective medical evidence. *Rollins v. Massanari*, 261 F.3d 853, 857
19 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991); *Fair v.*
20 *Bowen*, 885 F.2d 597, 601 (9th Cir. 1989). However, the medical evidence is a
21

1 relevant factor in determining the severity of a claimant's pain and its disabling
2 effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. § 404.1529(c)(2).

3 Here, the ALJ set out, in detail, the medical evidence contradicting
4 Plaintiff's claims of disabling limitations. Tr. 26-28. For example, Plaintiff's
5 "allegation of difficulty concentrating, frequent panic attacks in public, and
6 extreme difficulty getting along with others are out of proportion to her typically
7 unremarkable presentation during appointments" where she was frequently
8 observed as being comfortable and in no acute or apparent distress. Tr. 26 (citing
9 Tr. 445, 452, 463, 479, 487, 576, 579, 589, 630). In addition, Plaintiff's
10 allegations are "not entirely corroborated by objective examination findings and
11 observations," as seen in treatment notes "often remark[ing]" that Plaintiff was
12 calm and cooperative with largely normal speech, intact eye contact, intact
13 cognition, appropriate grooming, alert and oriented, and with no observed thought
14 process or thought content disturbances. Tr. 26-27 (citing Tr. 391, 422, 427, 522,
15 576, 579, 588-89, 709, 732, 743-44, 916).

16 Finally, the ALJ noted that after receiving mental health treatment, and when
17 her substance abuse was in remission, Plaintiff's symptoms improved. Tr. 27-28;
18 *see Tommasetti*, 533 F.3d at 1040 (a favorable response to treatment can
19 undermine a claimant's complaints of debilitating pain or other severe limitations).
20 For instance, during the adjudicatory period, the record indicates that Plaintiff used
21 methamphetamine in June 2014, August 2014, October 2014, and January 2015.

1 Tr. 27 (citing Tr. 505, 512, 835, 844). However, as noted by the ALJ, mental
2 status examinations only a few weeks after Plaintiff stopped substance use on each
3 occasion indicated that she was fully oriented with normal mental status, including
4 but not limited to: normal speech, thought process and content; fair judgment and
5 insight; linear and goal directed thought process; good mood and congruent affect;
6 and normal cognitive function. Tr. 27 (citing Tr. 339, 342, 388, 406, 506).
7 Moreover, Plaintiff “continued to improve once her substance abuse was in
8 remission” after January 2015, including improved insight and judgment with
9 intact cognition and full orientation; no deficits in memory; linear thought process;
10 good eye contact; “well regulated/stable” mood; and normal speech. Tr. 28 (citing
11 Tr. 422, 427, 434, 522, 553, 576, 579, 588-89, 702, 709, 732, 738, 743-44).

12 Plaintiff argues that she “did not show sustained improvement, and instead
13 continued to demonstrate serious symptoms of bipolar.” ECF No. 14 at 18. In
14 support of this argument, Plaintiff relies solely on her reports in April 2016 that she
15 was experiencing depression; lack of appetite; episodes of hypomania with
16 outbursts of anger, yelling, and meanness; and excessive spending. Tr. 419.
17 However, as noted by the ALJ, at this same visit, Plaintiff’s mental status
18 examination was “largely normal,” including findings that she was pleasant,
19 cooperative, easy to engage, eye contact was good, motor activity was within
20 normal limits, mood was euthymic and well-regulated/stable, affect was congruent,
21 thought content and process was organized, logical, linear and goal oriented, and

1 insight and judgment were fair. Tr. 28, 422. The Court also notes that even after
2 setting out the medical evidence that contradicted the severity of Plaintiff's
3 subjective claims, the ALJ recognized that "[t]his is not to say that [Plaintiff] does
4 not suffer from a significant condition without the influence of substance abuse."
5 Tr. 28. Specifically, the ALJ acknowledged Plaintiff's 2016 reports of depression,
6 anxiety, paranoid thoughts, and hallucinations. Tr. 656-58. However, the ALJ
7 also noted that these symptoms appeared to "have been brought on by life
8 stressors, in particular, her mother's illness"; and at the same visit Plaintiff was
9 noted to have stable mood, speech within normal limits, normal thought process
10 and content, no paranoid thinking, and was "doing very well." Tr. 28, 656-68.

11 Thus, regardless of evidence that could be interpreted more favorably to the
12 Plaintiff, it was reasonable for the ALJ to discount Plaintiff's symptom claims
13 based on the lack of objective during the relevant adjudicatory period to support
14 those claims. *See Burch*, 400 F.3d at 679 (ALJ's conclusion must be upheld where
15 evidence is susceptible to more than one rational interpretation). This lack of
16 corroboration of Plaintiff's claimed limitations by the medical evidence was a clear
17 and convincing reason, supported by substantial evidence, for the ALJ to discount
18 Plaintiff's symptom claims.

19 2. *Daily Activities*

20 Second, the ALJ noted that Plaintiff's "documented daily activities and
21 social functioning are inconsistent with her allegations of incapacitating mental

1 deficits and indicate that she is more active and independent than alleged once
2 substance abuse was in remission.” Tr. 28. Plaintiff correctly notes that a claimant
3 need not be utterly incapacitated in order to be eligible for benefits. ECF No. 14 at
4 18 (citing *Fair*, 885 F.2d at 603); *see also Orn*, 495 F.3d at 639 (“the mere fact that
5 a plaintiff has carried on certain activities . . . does not in any way detract from her
6 credibility as to her overall disability.”). Regardless, even where daily activities
7 “suggest some difficulty functioning, they may be grounds for discrediting the
8 [Plaintiff’s] testimony to the extent that they contradict claims of a totally
9 debilitating impairment.” *Molina*, 674 F.3d at 1113.

10 Here, Plaintiff testified that she alternates between manic and depressed
11 episodes; and she hears voices and hallucinates “all the time.” Tr. 54-60. If she’s
12 around a lot of people “something will go wrong” and she will get mad and yell
13 and scream; and she has aggressive thoughts about others while out in public. Tr.
14 26, 54. Plaintiff testified that she is able to go shopping with someone else, cannot
15 cross intersections, has trouble leaving her house, needs reminders to shower, and
16 does not cook for herself. Tr. 60-61, 69-70. However, as noted by the ALJ, the
17 overall record “indicates that [Plaintiff] is independent in her activities of daily
18 living.” Tr. 28.

19 Plaintiff generally argues, without citation to the record, that the ALJ erred
20 in discounting Plaintiff’s testimony because the ALJ “(1) improperly overstated
21 [Plaintiff’s] activities; and (2) failed to identify how such activities were

1 inconsistent with the disabling limitations.” ECF No. 14 at 19. However, the ALJ
2 specifically noted that Plaintiff testified to having trouble being around others,
3 completing tasks, and concentrating; however, the record indicates that Plaintiff
4 watches movies which is “indicative of her ability to follow long programs”; goes
5 shopping; attends appointments; utilizes public transportation; walks to the grocery
6 store as part of her daily routine; spends time with friends, family, and her
7 significant other; and manages her finances. Tr. 29 (citing Tr. 55, 72-73, 272-73,
8 388, 422, 426, 447-48, 625, 656, 709, 731-32). The ALJ further noted that the
9 record does not support Plaintiff’s testimony that she has to be accompanied by
10 another person when shopping; and despite reporting some difficulty in grooming,
11 Plaintiff is noted to be well-groomed throughout the record. Tr. 29.

12 Thus, regardless of whether the evidence could be viewed more favorably to
13 Plaintiff, it was reasonable for the ALJ to conclude that Plaintiff’s documented
14 daily activities and social functioning were inconsistent with her allegations of
15 incapacitating mental limitations. Tr. 28-29; *Molina*, 674 F.3d at 1113 (Plaintiff’s
16 activities may be grounds for discrediting Plaintiff’s testimony to the extent that
17 they contradict claims of a totally debilitating impairment); *Burch*, 400 F.3d at 679.
18 This was a clear and convincing reason to discredit Plaintiff’s symptom claims.

19 The Court concludes that the ALJ provided clear and convincing reasons,
20 supported by substantial evidence, for rejecting Plaintiff’s symptom claims.

1 **F. Step Five**

2 Finally, Plaintiff argues the ALJ improperly rejected the medical opinions
3 and Plaintiff's subjective testimony, and therefore erred at step five by posing an
4 incomplete hypothetical to the vocational expert. ECF No. 14 at 19-20. Plaintiff is
5 correct that “[i]f an ALJ's hypothetical does not reflect all of the claimant's
6 limitations, the expert's testimony has no evidentiary value to support a finding that
7 the claimant can perform jobs in the national economy.” *Bray*, 554 F.3d at 1228
8 (citation and quotation marks omitted). However, as discussed in detail above, the
9 ALJ's rejection of the medical opinions and Plaintiff's symptom claims, was
10 supported by the record and free of legal error. The hypothetical proposed to the
11 vocational expert contained the limitations reasonably identified by the ALJ and
12 supported by substantial evidence in the record. The ALJ did not err at step five

13 **CONCLUSION**

14 A reviewing court should not substitute its assessment of the evidence for
15 the ALJ's. *Tackett*, 180 F.3d at 1098. To the contrary, a reviewing court must
16 defer to an ALJ's assessment as long as it is supported by substantial evidence. 42
17 U.S.C. § 405(g). As discussed in detail above, the ALJ's finding that Plaintiff's
18 substance use was material to the determination of disability was supported by
19 substantial evidence. Further, the ALJ properly evaluated Plaintiff's impairments
20 at step two; properly found Plaintiff's mental impairment did not meet or
21 medically equal a Listing at step three; properly weighed the medical opinion

1 evidence; provided clear and convincing reasons to discount Plaintiff's symptom
2 testimony; and did not err at step five. After review, the court finds the ALJ's
3 decision is supported by substantial evidence and free of harmful legal error.

4 **ACCORDINGLY, IT IS HEREBY ORDERED:**

5 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.

6 2. Defendant's Motion for Summary Judgment, **ECF No. 15**, is
7 **GRANTED**.

8 The District Court Executive is hereby directed to enter this Order and
9 provide copies to counsel, enter judgment in favor of the Defendant, and **CLOSE**
10 the file.

11 **DATED** February 12, 2019.

12
13 s/ Rosanna Malouf Peterson
14 ROSANNA MALOUF PETERSON
15 United States District Judge
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